



July 12, 2024

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Occupational Safety and Health Standards Board
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Amalia Neidhardt:

This letter is in response to the June 26, 2024, Second Notice of Proposed Modifications to California Code of Regulations Title 8: Sections 1671.1 Fall Protection Plan; 1716.2 Residential-type Framing Activities, Wood and Light Gage Steel Frame Construction; 1730 Roof Hazards; and 1731 Residential-type Roofing Activities as it relates to Fall Protection in Residential Construction.

We acknowledge the efforts made by the Occupational Safety and Health Standards Board to address items not as least as effective (ALAE) as the OSHA standard in the first proposed modification and as outlined in OSHA's April 30, 2024, letter. However, our initial review indicated areas of concern with the second notice of proposed modifications and OSHA reserves the right to comment further, as needed.

Section 1716.2(e)(2) Residential-type Framing Activities, Work on Top Plate, Joists and Roof Structure Framing provides an alternative to a fall protection plan. Section 1671.1 now contains a presumption that conventional fall protection is feasible and will not create a greater hazard. However, the proposed language allows for employers to follow (A) through (C) in lieu of the requirement to prove infeasibility. This alternative, which applies only to framing work, adds a degree of ambiguity and broad interpretation to render ineffective the general requirement for conventional fall protection.

In addition, Section 1730(a) Roof Hazards states that during roofing operations the employer shall comply with the provisions of Section 1509 with an exception that this does not apply to residential-type roofing activities as defined in Section 1731. California employers are required to establish, implement, and maintain an Injury Illness Prevention Program, it is not clear why employers engaged in roofing operations do not need to follow Section 1731 and raises ALAE questions when compared to 29 Code of Federal Register 1926.20 and 1926.21.

OSHA recognizes that State Plans have varied procedures for adopting occupational safety and health standards and regulations. However, as you are aware, OSHA-approved State Plans must have and enforce standards in a manner that is ALAE as OSHA, as required by section 18(c)(2) of the Occupational Safety and Health Act of 1970 ("OSH Act"), 29 U.S.C. § 667(c)(2). This has been a long-standing issue and California must have the ability to

adopt required standards and regulations within the regulatory timeframe permitted by OSHA, which is generally six months.

In the interest of providing California workers the same, or higher, level of protection under OSHA's program, the requirements must be described in a manner which makes clear to residential construction employers what requirements apply to residential construction activities. Therefore, we respectfully request that these concerns be addressed in an expeditious manner in addition to the other related California standards mentioned below to avoid reaching an adverse ALAE determination with respect to the California State Plan.

- Construction Safety Orders, Article 24, Section 1669, General
- Construction Safety Orders, Article 24, Section 1670, Personal Fall Arrest Systems, Personal Fall Restraint Systems and Positioning Devices
- Construction Safety Orders, Article 24, Section 1671, Safety Nets General
- Construction Safety Orders, Article 30, Section 1724, Roofing-General

Should you have any questions or concerns, please contact me at (619) 557-2910 or engard.derek@dol.gov.

Sincerely,

Mark Donnal
Assistant Area Director
for
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